IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 1230 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MELABHAI KEVALDAS PRAJAPATI
VERSUS
STATE OF GUJARAT

Appearance:
MR VIPUL MODI for Petitioners

CORAM : MR JUSTICE S.K. KESHOTE
Date of Order: 26/11/98

C.A.V. ORDER

Heard the learned counsel for the petitioners.

2. Under the impugned order dated 1-6-1998 the

learned trial Court, 4th Civil Judge (S.D.), Palanpur allowed the application of respondent No.2 and ordered him to be impleaded as defendant No.2 in regular civil suit No.110/98 filed by the plaintiffs-petitioners.

3. The plaintiffs-petitioners filed regular civil suit No.110/98 in the Court of Civil Judge (S.D.), Palanpur praying for permanent injunction that the respondent-State of Gujarat should not dispossess them from the suit land without following the due process as they have been cultivating the suit land as ganot for a very long time as reflected in the pahani patrak entries which are produced and have spend huge amount and made the suit land fertile and cultivable land.

4. It is not in dispute that in respect of this very disputed land the proceedings under the Agricultural Land Ceiling Act have been initiated against the original land holders and the land in dispute has been allotted to the defendant-respondent No.2 by the Government vide its order dated 18-4-1998 and he was put in possession of the land vide receipt dated 2-5-1998. The plaintiffs-petitioners are claiming ownership of the suit land which has been declared to be excess vacant land and has been allotted to the respondent No.2. The plaintiffs-petitioners have impleaded only the State of Gujarat as party to the suit. They were in knowledge of the fact that the excess land has been allotted to the respondent No.2 still that respondent has not been impleaded as party to the suit.

5. Learned counsel for the petitioners relying on the decision of this Court in the case of Noor Mahmad vs. Anand Mohan reported in 22 G.L.R. 332 contended that the respondent No.2 was neither necessary nor proper party to the suit.

6. The present case is a case where the surplus land has been allotted to the respondent No.2 and the defendant No.2 appears to have also been put in possession. The excess lands which are meant for allotment to landless persons and where the lands have been allotted and allottees have been put in possession then any decision given in the suit behind the back of those persons will adversely affect their rights and it will create manifold complications. The respondent No.2 cannot be taken to be an altogether stranger in these facts and circumstances of the case to the litigation and further it cannot be said that his rights are not going to be affected by the decision. In such matter

where the rights of parties are likely to be adversely affected by the decision of the civil court, certainly these persons may not be third party in the suit. It is a settled law that where by decree in a suit in which the persons who were not party and thereby their rights are being affected they can challenge the decree by filing an appeal or review application. In view of this legal position otherwise also the challenge to the impugned order by the petitioners does not stand to any merits.

7. The decision on which reliance has been placed is distinguishable on the ground that there appears that the allottee was not put in possession. Here the matter has gone a further step and the allottee has been put in possession of the land. In view of this fact and coupled with the fact that the decision in the suit if given in favour of the plaintiffs may adversely affect the rights of the defendant-respondent No.2 no exception to the order passed by the trial court and challenged in this civil revision application can be taken. Moreover, each case has to be decided on its own facts and in the given facts i.e. where not only the land has been allotted to the respondent No.2 but he has been put in possession thereof, and on his application he has been impleaded as party to the suit, the the order cannot be said to be perverse or where it can be termed as if the Court has acted illegally in exercising its jurisdiction. Otherwise also, in a case where the Government is only party it is not out of context to state that the suit may not be properly and effectively defended by it. It is not unknown that the State Government is not defending the cases against it effectively and properly. The suit ultimately in case it is decided in favour of the plaintiffs-petitioners, will adversely affect the respondent No.2 and this is another reason which persuades me not to interfere in this revision application. Moreover, learned counsel for the petitioners has failed to show that if the impugned order is allowed to stand it will occasion failure of justice or cause irreparable injury to the plaintiffs-petitioners.

8. So taking into consideration the totality of the facts of this case including the fact that the plaintiffs-petitioners have come up with the case that the respondent No.2 has been put in possession of the suit land any decision given in the suit may affect the rights of the allottee as well as all the possibility of not effectively and properly defending of the suit by the State Government, the order passed by the court

below to implead the respondent No.2 as party to the suit is a just and reasonable order, to which no exception can be taken.

9. In the result, this civil revision application fails and the same is dismissed.

(S.K.Keshote,J)

zgs/-